

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ONONDAGA

HW 1 DOE, Being a Victim of Child Sexual Abuse,

**SUMMONS**

Plaintiff,

v.

**Index No.:**

THE DIOCESE OF SYRACUSE, NEW YORK  
240 East Onondaga Street  
Syracuse, New York 13202,

CONVENTUAL FRANCISCAN FRIARS OF THE  
PROVINCE OF OUR LADY OF CONSOLATION  
101 Saint Anthony Drive  
Mount Saint Francis, Indiana 47146, and

FRANCISCAN CHURCH OF THE ASSUMPTION a/k/a  
CHURCH OF THE ASSUMPTION a/k/a  
ASSUMPTION CHURCH  
812 North Salina Street  
Syracuse, New York 13208,

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

**YOU ARE HEREBY SUMMONED** to answer the Complaint in this action, and to serve a copy of your Answer or, if the Complaint is not served with a Summons, to serve a Notice of Appearance, on Plaintiff's attorney within **twenty (20)** days after the service of this Summons, exclusive of the day of service, or within **thirty (30)** days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

This action is brought in ONONDAGA COUNTY based upon the location of the incidents.

Dated: August 13, 2019  
Amherst, New York

  
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STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ONONDAGA

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HW 1 DOE, Being a Victim of Child Sexual Abuse,

Plaintiff,

v.

**COMPLAINT**

**Index No.:**

THE DIOCESE OF SYRACUSE, NEW YORK,  
CONVENTUAL FRANCISCAN FRIARS OF THE  
PROVINCE OF OUR LADY OF CONSOLATION, and  
FRANCISCAN CHURCH OF THE ASSUMPTION a/k/a  
CHURCH OF THE ASSUMPTION a/k/a  
ASSUMPTION CHURCH,

Defendants.

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Plaintiff HW 1 DOE, Being a Victim of Child Sexual Abuse, by and through his attorneys, HOGANWILLIG, PLLC, as and for his Verified Complaint against Defendants THE DIOCESE OF SYRACUSE, NEW YORK (“DIOCESE”), CONVENTUAL FRANCISCAN FRIARS OF THE PROVINCE OF OUR LADY OF CONSOLATION (“CONSOLATION”), and FRANCISCAN CHURCH OF THE ASSUMPTION a/k/a CHURCH OF THE ASSUMPTION a/k/a ASSUMPTION CHURCH (“ASSUMPTION”) herein, alleges as follows:

1. At all relevant times hereinafter mentioned, Plaintiff was and still is a resident of the County of Erie and State of New York who, at the time of the incidents alleged herein, was a resident of the County of Onondaga and State of New York.

2. Plaintiff is filing under a psuedonym publicly, but their identity can be confidentially disclosed to Defendants in discovery not to be filed publicly.

3. Upon information and belief, and at all times hereinafter mentioned, Defendant DIOCESE was and still is a Roman Catholic diocese headquartered in Syracuse, New York, with

its principal place of business located at 240 East Onondaga Street, County of Onondaga, and State of New York.

4. Upon information and belief, and at all times hereinafter mentioned, Defendant CONSOLATION was and still is a Province of the worldwide religious order of the Roman Catholic Church known as the Order of Friars Minor ("O.F.M."), with its principal place of business/ Provincial office located at 101 Saint Anthony Drive, Mount Saint Francis, County of Floyd, State of Indiana.

5. Upon information and belief, and at all times hereinafter mentioned, Defendant ASSUMPTION was and still is a Catholic Church headquartered in Syracuse, New York with its principal place of business located at 812 North Salina Street, City of Syracuse, County of Onondaga, State of New York.

6. Upon information and belief, and at all relevant times herein, Defendant ASSUMPTION was operated by Defendant DIOCESE.

7. Upon information and belief, and at all times hereinafter mentioned, Defendant CONSOLATION conducted activities in Onondaga County, New York, including providing friars to various schools, churches, and parishes owned and operated by Defendant DIOCESE and at the request of Defendant DIOCESE in the county of Onondaga and State of New York, including Defendant ASSUMPTION.

#### **FACTS COMMON TO ALL CLAIMS**

8. Upon information and belief, Father Felix R. Colosimo ("Fr. Colosimo"), date of birth April 13, 1939, was a member of the O.F.M. who became incorporated into Defendant CONSOLATION on or about 1965.

9. Upon information and belief, Defendant Fr. Colosimo was assigned to Defendant ASSUMPTION by Defendants DIOCESE and CONSOLATION in or about the 1970s.

10. Upon information and belief, during the times relevant to the allegations set forth herein, Defendant FR. COLOSIMO was under the direct supervision, employ, and/or control of Defendants DIOCESE, CONSOLATION, and ASSUMPTION.

11. Upon information and belief, Defendant COLOSIMO'S assignments included: St. John the Baptist in Rome, New York (1965-1968); Our Lady of Pompeii in Syracuse, New York (1968-1971); St. Bartholomew in Norwich, New York (1971-1976); Defendant ASSUMPTION; St. Peter's in Utica, New York (1976-1981); St. Leo's in Holland Patent, New York (1981-1987); St. Anthony of Padua in Utica, New York (1987-1998); and Our Lady of the Rosary in New Hartford, New York (1998-2014).

12. In or about July 2014, Defendant DIOCESE received allegations against Fr. Colosimo of sexual abuse of a minor and deemed them to be credible, and Fr. Colosimo was removed from the priesthood.

13. Through Fr. Colosimo's positions at, within, or for Defendants DIOCESE, ASSUMPTION, and CONSOLATION, he was put in direct contact with Plaintiff, beginning in the 1970s.

14. In approximately 1976, Plaintiff was the victim of sexual harassment, sexual abuse, and violence by or at the direction of Fr. Colosimo, and with the acquiescence, approval, participation, and implied permission of Defendants DIOSCSE, ASSUMPTION, and CONSOLATION.

15. Upon information and belief, Fr. Colosimo's sexual abuse began when Plaintiff was approximately twelve (12) years old.

16. The incidents experienced by Plaintiff included, but are not limited to, the following:

- a. On multiple occasions, Fr. Colosimo forced then-infant Plaintiff to perform oral sex on Fr. Colosimo in his office and in various rooms at Defendant ASSUMPTION;
- b. On multiple occasions, Fr. Colosimo would ejaculate into then-infant Plaintiff's mouth, causing then-infant Plaintiff to become sick;
- c. On multiple occasions, Fr. Colosimo would supply then-infant Plaintiff with a cup to spit the semen into, so that then-infant Plaintiff would not throw up; and
- d. On multiple occasions, Fr. Colosimo would threaten then-infant Plaintiff not to tell anyone of the abuse or he would be punished and his name would be in the newspaper.

17. Fr. Colosimo died on or about October 26, 2017.

18. Venue is proper in Onondaga County based on the location of the incidents alleged herein.

19. This action is brought pursuant to CPLR § 214-G, as added by the New York Child Victims Act, which has revived claims of child sexual abuse for a period of one year beginning on August 14, 2019, six months after the effective date of the section (February 14, 2019). This action is timely commenced.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS: NEGLIGENCE**

20. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "19" as though more fully set forth herein.

21. Fr. Colosimo, as an agent, servant, and/or employee of Defendants DIOCESE, ASSUMPTION, and CONSOLATION, was a religious figure and educator who had physical custody of Plaintiff, and owed Plaintiff a duty of care.

22. All Defendants were in *loco parentis* and owed Plaintiffs a duty of care.

23. Defendants DIOCESE, ASSUMPTION, and CONSOLATION breached their duty of care owed to Plaintiff when they allowed Plaintiff to be in contact with Fr. Colosimo.

24. Defendants DIOCESE, ASSUMPTION, and CONSOLATION knew or should have known of the sexual abuse, sexual harassment, and violence occurring by or at the direction of Fr. Colosimo, and breached their duty owed to Plaintiff when they failed to report the sexual abuse, sexual harassment, and violence occurring by or at the direction of Fr. Colosimo.

25. Defendants DIOCESE, ASSUMPTION, and CONSOLATION are individually responsible and are also responsible under the doctrines of vicarious responsibility and respondent superior.

26. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for his own physical safety.

27. As a result of Defendants' breach, Plaintiff has incurred and will incur medical costs to treat their past, present, and future psychological suffering as a result of being a victim of sexual abuse, sexual harassment, and violence while in the control of Fr. Colosimo.

28. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS:**  
**FAILURE TO REPORT**

29. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "28" as though more fully set forth herein.

30. Defendants ASSUMPTION and CONSOLATION, through their agents, servants, and employees, were Mandated Reporters under New York Social Services Law.

31. Defendants ASSUMPTION and CONSOLATION, through their agents, servants, and employees, had reasonable cause to suspect that Plaintiff was being abused and/or maltreated by Defendant Fr. Colosimo.

32. Defendants ASSUMPTION and CONSOLATION, through their agents, servants, and employees, knowingly and willfully failed to report the suspected child abuse or maltreatment to anyone, including the police or Child Protective Services.

33. Defendants ASSUMPTION and CONSOLATION did not provide their employees with written information on reporting requirements.

34. Defendants ASSUMPTION and CONSOLATION failed to follow the policies of required reporting including, but not limited to, the policies listed in the Code of Conduct for Priests, Deacons, Pastoral Ministers, Administrators, Staff and Volunteers, as well as New York Consolidated Laws, Social Services Law - SOS § 413.

35. Defendants ASSUMPTION and CONSOLATION are liable for the failure to report pursuant to New York Consolidated Laws, Social Services Law - SOS § 420.

36. The knowing and willful failure of Defendants ASSUMPTION and CONSOLATION, through the inaction of their agents, servants, and employees, to report the child abuse and maltreatment of Plaintiff was a proximate cause of Plaintiff's damages.

37. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS:**  
**INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**

38. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "37" as though more fully set forth herein.

39. During the time period encompassing 1976, Defendants DIOCESE, ASSUMPTION, and CONSOLATION allowed Fr. Colosimo unrestricted access to Plaintiff and willfully and/or intentionally ignored complaints against Fr. Colosimo of sexual abuse, sexual harassment, and violence.

40. During the time period referenced above, Defendants DIOCESE, ASSUMPTION, and CONSOLATION willfully and/or intentionally ignored Plaintiff's safety by requiring and allowing Plaintiff to be watched by Fr. Colosimo by himself.

41. Defendants DIOCESE, ASSUMPTION, and CONSOLATION were deliberately indifferent to the risk of sexual harassment and violence posed to Plaintiff by being alone with Fr. Colosimo.

42. Defendants DIOCESE, ASSUMPTION, and CONSOLATION willfully and/or intentionally created a hostile and unsafe religious and educational environment that no child would be able to tolerate.

43. Defendants DIOCESE, ASSUMPTION, and CONSOLATION, in order to avoid embarrassment, scandal, and negative publicity, intended to cause Plaintiff shame, humiliation, and extreme emotional distress so Plaintiff would stay silent, and not report the abuse.

44. Defendants behaved in a manner toward Plaintiff that was so outrageous as to exceed all reasonable bounds of decency.

45. Defendants knew with substantial certainty or should have known that their behavior would cause Plaintiff to be a victim of sexual abuse, sexual harassment, and violence.

46. Defendants knew with substantial certainty or should have known that their behavior would cause severe emotional distress to Plaintiff.

47. The foregoing acts of Defendants caused Plaintiff physical, mental and emotional distress.

48. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS:**  
**NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

49. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "48" as though more fully set forth herein.

50. Defendants DIOCESE, ASSUMPTION, and CONSOLATION were negligent when they allowed Plaintiff to continue to be exposed to Fr. Colosimo despite being aware of allegations of sexual harassment, sexual abuse, and violence.

51. Defendants DIOCESE, ASSUMPTION, and CONSOLATION knew or should have known this would subject Plaintiff to sexual harassment, sexual abuse, and violence, and knew or should have known this would unreasonably endanger Plaintiff's safety, cause them to fear for their safety, and cause them severe emotional distress.

52. Defendants DIOCESE, ASSUMPTION, and CONSOLATION owed a duty to Plaintiff to protect them from sexual harassment, sexual abuse, and violence from Fr. Colosimo, including but not limited to when on the premises of Defendants DIOCESE, ASSUMPTION, and CONSOLATION.

53. Defendants DIOCESE breached the duty owed to Plaintiff to protect them from sexual abuse, sexual harassment, and violence from Fr. Colosimo, including but not limited to when on the premises of Defendants DIOCESE, ASSUMPTION, and CONSOLATION.

54. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for his own physical safety.

55. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS:**  
**NEGLIGENT HIRING**

56. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "55" as though more fully set forth herein.

57. Defendants DIOCESE, ASSUMPTION, and CONSOLATION owed Plaintiff a duty of care to supervise and protect Plaintiff.

58. Defendants DIOCESE, ASSUMPTION, and CONSOLATION were obligated to Plaintiff to hire and/or assign personnel, including Fr. Colosimo, to ensure that the children assigned to said personnel would be in a safe educational and religious environment.

59. Defendants DIOCESE, ASSUMPTION, and CONSOLATION knew or should have known at the time of Fr. Colosimo's assignment to Defendants DIOCESE, ASSUMPTION, and CONSOLATION of his propensity for the conduct which caused the injury.

60. Plaintiff was a victim of sexual abuse, sexual harassment, and violence by or at the direction of Fr. Colosimo.

61. Defendants DIOCESE, ASSUMPTION, and CONSOLATION breached their duty of care to Plaintiff when they negligently hired Defendant Fr. Colosimo.

62. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for his own physical safety.

63. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS:**  
**NEGLIGENT SUPERVISION AND RETENTION**

64. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "63" as though more fully set forth herein.

65. Defendants DIOCESE, ASSUMPTION, and CONSOLATION owed Plaintiff a duty of care to supervise and protect Plaintiff.

66. Defendants DIOCESE, ASSUMPTION, and CONSOLATION were obligated to Plaintiff to supervise the personnel assigned to watch Plaintiff, including but not limited to while on the premises of Defendants DIOCESE, ASSUMPTION, and CONSOLATION, to ensure that Plaintiff was in a reasonably safe environment.

67. Plaintiff was the victim of sexual abuse, sexual harassment, and violence by or at the direction of Fr. Colosimo.

68. Defendants DIOCESE, ASSUMPTION, and CONSOLATION had knowledge or should have had knowledge of the sexual abuse, sexual harassment, and violence by or at the direction of Fr. Colosimo and negligently ignored the sexual abuse, sexual harassment, and violence that was done by or at the direction of Fr. Colosimo.

69. Defendants DIOCESE, ASSUMPTION, and CONSOLATION did not terminate the employment or suspend the duties of Fr. Colosimo despite Plaintiff, and others, being victims of the sexual abuse, sexual harassment and violence committed by Fr. Colosimo until at least 2014.

70. Defendants DIOCESE, ASSUMPTION, and CONSOLATION breached their duty of care to Plaintiff when they negligently supervised and retained Fr. Colosimo.

71. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for their own physical safety.

72. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS:**  
**PUNITIVE DAMAGES**

73. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "72" as though more fully set forth herein.

74. Defendants DIOCESE, ASSUMPTION, and CONSOLATION's knowledge of the violence, sexual harassment, and/or misconduct against Plaintiff by or at the direction of Fr. Colosimo is tantamount to a wanton and conscious disregard for the safety of Plaintiff and others, and warrants the imposition of punitive damages.

75. By reason of the malicious, intentional, willful, and/or negligent conduct of Defendants herein, and by such other acts that were morally reprehensible, Defendants' conduct evidenced a callous disregard for the safety of Plaintiff, and said acts constituted a wanton, reckless and/or malicious disregard for the rights of others and, as a result thereof, Plaintiff demands punitive damages.

76. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

**AS AND FOR AN EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS:**  
**VIOLATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972**

77. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "76" as though more fully set forth herein.

78. Title IX of the Education Amendment of 1972 forbids a "funding recipient" from discriminating on the basis of sex in educational programs and activities.

79. Upon information and belief, Defendant ASSUMPTION is a "funding recipient" under Title IX.

80. Plaintiff suffered sexual abuse, sexual harassment, and violence by or at the direction of Fr. Colosimo, in violation of Title IX.

81. Fr. Colosimo's verbal and physical conduct of a sexual nature was severe or pervasive enough to alter the conditions of Plaintiff's educational environment and created an abusive educational environment.

82. Defendants DIOCESE, ASSUMPTION, and CONSOLATION had the authority and duty to institute corrective measures.

83. Defendants DIOCESE, ASSUMPTION and CONSOLATION acted with deliberate indifference in failing to respond to the reports of sexual harassment and sexual abuse being perpetrated by Fr. Colosimo.

84. The deliberate indifference of Defendants DIOCESE, ASSUMPTION, and CONSOLATION, and the sexual harassment and sexual abuse committed by Defendant COLOSIMO, effectively barred Plaintiff access to various educational opportunities and benefits at Defendant ASSUMPTION and subjected Plaintiff to discrimination on the basis of sex in violation of Title IX.

85. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for his own physical safety.

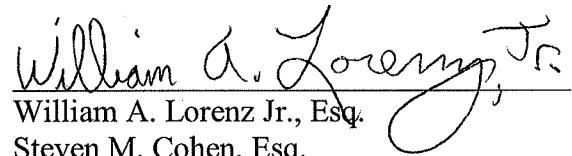
86. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

87. Plaintiff also seeks attorneys' fees under Title IX.

88. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

**WHEREFORE**, Plaintiff demands judgment against Defendants in an amount which exceeds the jurisdictional limits of all other courts which might otherwise have jurisdiction, and for such other and further relief to Plaintiff as this Court deems just and proper.

DATED: August 13, 2019  
Amherst, New York

  
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